

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

**APPELLANT FEDERAL ENERGY REGULATORY COMMISSION'S STATEMENT
OF ISSUES TO BE PRESENTED ON APPEAL AND DESIGNATION OF RECORD**

Appellant Federal Energy Regulatory Commission (“FERC”), pursuant to Rule 8009(a) of the Federal Rules of Bankruptcy Procedure, states the issues to be presented on appeal from the *Preliminary Injunction Order Against the Federal Energy Regulatory Commission*

[Docket No. 114] and *Memorandum Decision Supporting Order Granting Preliminary Injunction* [Docket No. 125], and designates items to be included in the record on appeal.

STATEMENT OF ISSUES PRESENTED ON APPEAL

Whether the bankruptcy court erred by concluding that the automatic stay of the Bankruptcy Code, 11 U.S.C. § 362(a), and its equitable authority, 11 U.S.C. § 105(a), authorized it to enjoin ongoing FERC proceedings.

DESIGNATION OF ITEMS FOR RECORD ON APPEAL

FERC designates the following items to be included in the record on appeal, which includes all exhibits and addenda attached thereto and all documents incorporated by reference therein:

Item Number	Adversary Proceeding Docket No.	Document
1.	Docket No. 1.	Complaint for Declaratory Judgment, Preliminary and Permanent Injunction Against the Federal Energy Regulatory Commission
2.	Docket No. 3.	Plaintiff's <i>Ex Parte</i> Motion for Temporary Restraining Order and Preliminary Injunction Against Federal Energy Regulatory Commission
3.	Docket No. 4.	Memorandum of Law in Support of the Motion of FirstEnergy Solutions Corp. and FirstEnergy Generation, LLC for <i>Ex Parte</i> Temporary Restraining Order and Preliminary Injunction Against the Federal Energy Regulatory Commission
4.	Docket No. 5.	Expert Declaration of David Gerhardt in Support of: (1) the Motion Of FirstEnergy Solutions Corp. and FirstEnergy Generation, LLC for Preliminary and Permanent Injunction and <i>Ex Parte</i> Temporary Restraining Order Against the Federal Energy Regulatory Commission; (2) the Motion for Entry of an Order Authorizing FirstEnergy Solutions Corp. and FirstEnergy Generation, LLC to Reject Certain Energy Contracts; and (3) the Motion for Entry of an Order Authorizing FirstEnergy Solutions Corp. and FirstEnergy Generation, LLC to Reject a Certain Multiparty

		Intercompany Power Purchase Agreement with the Ohio Valley Electric Corporation
5.	Docket No. 6.	Expert Declaration of Judah L. Rose in Support of: (1) the Motion Of FirstEnergy Solutions Corp. and FirstEnergy Generation, LLC for Preliminary and Permanent Injunction and <i>Ex Parte</i> Temporary Restraining Order Against the Federal Energy Regulatory Commission; (2) the Motion for Entry of an Order Authorizing FirstEnergy Solutions Corp. and FirstEnergy Generation, LLC to Reject Certain Energy Contracts; and (3) the Motion for Entry of an Order Authorizing FirstEnergy Solutions Corp. and FirstEnergy Generation, LLC to Reject a Certain Multiparty Intercompany Power Purchase Agreement with the Ohio Valley Electric Corporation
6.	Docket No. 7.	Expert Declaration of Kevin T. Warvell in Support of: (1) the Motion Of FirstEnergy Solutions Corp. and FirstEnergy Generation, LLC for Preliminary and Permanent Injunction and <i>Ex Parte</i> Temporary Restraining Order Against the Federal Energy Regulatory Commission; (2) the Motion for Entry of an Order Authorizing FirstEnergy Solutions Corp. and FirstEnergy Generation, LLC to Reject Certain Energy Contracts; and (3) the Motion for Entry of an Order Authorizing FirstEnergy Solutions Corp. and FirstEnergy Generation, LLC to Reject a Certain Multiparty Intercompany Power Purchase Agreement with the Ohio Valley Electric Corporation
7.	Docket No. 8.	Declaration of David M. Zensky in Support of the Motion of FirstEnergy Solutions Corp. and FirstEnergy Generation, LLC for Preliminary and Permanent Injunction and <i>Ex Parte</i> Temporary Restraining Order Against the Federal Energy Regulatory Commission
8.	Docket No. 11.	<i>Ex Parte</i> Temporary Restraining Order Against Federal Energy Regulatory Commission
9.	Docket No. 13, 15.	Transcript of Hearing Held 04/2/2018 RE: Ex Parte Motion for Temporary Restraining Order and Preliminary Injunction Against Federal Energy Regulatory Commission
10.	Docket No. 37, 39.	Transcript of Hearing Held 04/09/2018 RE: Status Conference
11.	Docket No. 40, 41.	Transcript of Hearing Held 04/10/2018 RE: Status Conference
12.	Docket No. 52.	Amended Temporary Restraining Order Against Federal Energy Regulatory Commission

13.	Docket No. 72.	Transcript of Hearing Held 04/24/2018 RE: Telephonic Status Conference.
14.	Docket No. 81.	Motion of Certain Sponsoring Companies to File an Amicus Brief in Opposition to Plaintiffs' Motion for a Preliminary Injunction Against the Federal Energy Regulatory Commission
15.	Docket No. 84.	Ohio Valley Electric Corporation's Opposition to Preliminary Injunction Motion
16.	Docket No. 85.	Defendant Federal Energy Regulatory Commission's Opposition to the Plaintiffs' Motion for Preliminary Injunction
17.	Docket No. 86.	Objection and Memorandum of Law of Krayn Wind LLC in Opposition to Plaintiffs' <i>Ex Parte</i> Motion for Temporary Restraining Order and Injunction Against Federal Energy Regulatory Commission
18.	Docket No. 87.	Appendix of Exhibits in Support of Objection and Memorandum of Law of Krayn Wind LLC in Opposition to Plaintiff's <i>Ex Parte</i> Motion for Temporary Restraining Order and Injunction Against Federal Energy Regulatory Commission
19.	Docket No. 91.	Ohio Valley Electric Corporation's Motion for Abstention or, in the Alternative, Referral under the Doctrine of Primary Jurisdiction
20.	Docket No. 92.	Ohio Valley Electric Corporation's Motion for Expedited Consideration of Abstention Motion
21.	Docket No. 95.	FERC's Joinder if Motion for Abstention or, in the Alternative, Referral Under the Doctrine of Primary Jurisdiction
22.	Docket No. 96.	Debtors' Motion to Strike or, in the Alternative, Opposition to Ohio Valley Electric Corporation's Motion for Expedited Consideration of Abstention Motion
23.	Docket No. 100.	Order Denying Ohio Valley Electric Corporation's Motion to Expedite Consideration of Its Motion for Abstention or, in the Alternative, Referral Under the Doctrine of Primary Jurisdiction
24.	Docket No. 101.	Transcript of Hearing Held 05/3/2018 RE: Telephonic Status Conference, Order for Expedited Hearing, Joint Motion to Intervene
25.	Docket No. 106	Order Granting Motion of Certain Sponsoring Companies to File an Amicus Brief in Opposition To Plaintiff's Motion for a Preliminary Injunction Against the Federal Energy Regulatory Commission
26.	Docket No. 107.	Amicus Brief of Certain Sponsoring Companies in Opposition of Plaintiffs' Motion for Preliminary Injunction Against Federal Energy Regulatory Commission

27.	Docket No. 109.	Reply in Further Support of the Motion of FirstEnergy Solutions Corp. and FirstEnergy Generation, LLC for a Preliminary Injunction Against the Federal Energy Regulatory Commission
28.	Docket No. 110.	Official Committee of Unsecured Creditors' Reply Memorandum of Law in Support of Motion for Preliminary Injunction
29.	Docket No. 112.	Stipulation of Uncontested Facts
30.	Docket No. 114.	Preliminary Injunction Against the Federal Energy Regulatory Commission
31.	Docket No. 118.	Transcript of Hearing Held 5/11/2018 Re: Motion for Preliminary Injunction
32.	Docket No. 125.	Memorandum Decision Supporting Order Granting Preliminary Injunction
33.	Docket No. 127.	Notice of Appeal and Statement of Election (filed by Ohio Valley Electric Corp.)
34.	Docket No. 129.	Motion to Certify Preliminary Injunction Order for Direct Appeal to the United States Court of Appeals for the Sixth Circuit
35.	Docket No. 131.	Motion for Leave to Appeal the Preliminary Injunction Order as of Right, or in the Alternative Requesting Leave
36.	Docket No. 132.	Notice of Appeal and Statement of Election to District Court (filed by Krayn Wind LLC)
37.	Docket No. 133.	Joinder of Krayn Wind LLC in and to Motion of Ohio Valley Electric Corporation to Certify Preliminary Injunction Order as of Right, or in the Alternative, Requesting Leave
38.	Docket No. 134.	Joinder of Krayn Wind LLC in and to Motion of Ohio Valley Electric Corporation to Appeal the Preliminary Injunction Order as of Right, or in the Alternative, Requesting Leave
39.	Docket No. 136	Notice of Appeal Under 11 U.S.C. § 158(a)(1) and Statement of Election (filed by FERC)
40.	Docket No. 142	FERC's Joinder of Motion to Certify Preliminary Injunction Order for Direct Appeal to the United States Court of Appeals for the Sixth Circuit
41.	Docket No. 146	Order Granting Certification
Item Number	Joint Trial Exhibit No.	Document
42.	D1	Amended and Restated Inter-Company Power Agreement, dated as of September 10, 2010

Item Number	Request for Judicial Notice Exhibit No.	Document
43.	CC	Mot. For Entry of an Order Authorizing FirstEnergy Solutions Corp. and FirstEnergy Generation, LLC to Reject Certain Energy Contracts as of the Pet. Date, <i>In re: FirstEnergy Solutions Corp., et al.</i> , (N.D. Ohio 2018) (No. 18-50757)
44.	DD	Mot. for Entry of an Order Authorizing FirstEnergy Solutions Corp. and FirstEnergy Generation, LLC to Reject a Certain Multi-Party Intercompany Power Purchase Agreement with the Ohio Valley Electric Corporation as of the Pet. Date, <i>In re: FirstEnergy Solutions Corp., et al.</i> , (N.D. Ohio 2018) (No. 18-50757)
45.	FF	Order to Show Cause, <i>In re: Boston Generating, LLC et al.</i> , (S.D. N.Y. 2010) (10 Civ. 6528 (DLC))
46.	II	California State Parties' Notice of Withdrawal of Petition as Moot, and Req. to Vacate Interim Guidance Order or, in the Alternative Req. for Rehearing, Clarification and Order to Show Cause, Cal. Electricity Oversight Bd. et al. v. Calpine Energy Serv. et al., 114 F.E.R.C. P51,003 (2006) (No. EL06-30)
47.	DJ-1	Complaint filed in Ohio Valley Electric Corp. v. FirstEnergy Solutions Corp., Docket No. EL18-135 (Mar. 26, 2018) (the "FERC Proceeding")
48.	DJ-2	Motion to Intervene of the Dayton Power and Light Company Under EL18-135, filed in the FERC Proceeding on March 27, 2018
49.	DJ-3	Motion to Intervene of American Electric Power Service Corporation Under EL18-135, filed in the FERC Proceeding on March 29, 2018
50.	DJ-4	Motion to Intervene of Electric Power Supply Association Under EL18-135, filed in the FERC Proceeding on April 11, 2018
51.	DJ-5	Motion of National Rural Electric Cooperative Association to Intervene in Support of Complainant Ohio Valley Electric Corporation, filed in the FERC Proceeding on April 16, 2018
52.	DJ-6	Motion to Intervene of the Environmental Law and Policy Center, filed in the FERC Proceeding on April 16, 2018
53.	DJ-7	Motion to Intervene and Comments in Support of Louisville Gas and Electric Company and Kentucky Utilities Company, filed in the FERC Proceeding on April 16, 2018

54.	DJ-8	Motion to Intervene of American Municipal Power, Inc. Under EL18-135, filed in the FERC Proceeding on April 16, 2018
55.	DJ-9	Motions to Intervene of Wolverine Power Supply Cooperative, Inc. and Buckeye Power, Inc. and Joint Comments in Support of Ohio Valley Electric Corporation's Complaint, filed in the FERC Proceeding on April 16, 2018
56.	DJ-10	Motion to Intervene of EDP Renewables North America LLC Under EL18-135, filed in the FERC Proceeding on April 19, 2018
57.	DJ-11	Motion to Intervene, Preliminary Comments, and Motion for an Extension of Time to File Comments of Krayn Wind LLC, filed in the FERC Proceeding on April 26, 2018
58.	DJ-12	Motion to Intervene of Duke Energy Ohio, Inc. Under EL 18-135, filed in the FERC Proceeding on April 26, 2018
59.	DJ-13	Comments of the Indicated ICPA Sponsors in Support of Complaint, filed in the FERC Proceeding on April 27, 2018
60.	DJ-14	Motion to Intervene and Protest of the Ad Hoc Group of Bruce Mansfield Certificateholders, filed in the FERC Proceeding on April 30, 2018
61.	DJ-15	Motion to Intervene of the Office of the Ohio Consumers' Counsel Under EL18-135, filed in the FERC Proceeding on April 30, 2018
62.	DJ-16	Comments of the Office of the Ohio Consumers' Counsel, filed in the FERC Proceeding on April 30, 2018
63.	DJ-18	Declaration of Donald R. Schneider In Support of Chapter 11 Petitions And First Day Motions [Bankr. Docket No. 55], dated April 1, 2018

RULE 8009(b)(1)(B) CERTIFICATION

FERC certifies, under Rule 8009(b)(1)(B), that it is not ordering the transcripts designated above as they are already on file in the Clerk's Office.

Dated: June 14, 2018

Respectfully submitted,

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ATTORNEYS FOR THE FEDERAL
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 14, 2018, I electronically filed the foregoing APPELLANT FEDERAL ENERGY REGULATORY COMMISSION'S STATEMENT OF ISSUES TO BE PRESENTED ON APPEAL AND DESIGNATION OF RECORD with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to all CM/ECF participants.

/s/ Marc S. Sacks
MARC S. SACKS
Commercial Litigation Branch
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